

Stephen B. Morris (SBN 126192)  
 Mark C. Hinkley (SBN 138759)  
**MORRIS and ASSOCIATES**  
 444 West C Street, Suite 300  
 San Diego, California 92101  
 Tel: (619) 239-1300  
 Fax: (619) 234-3672  
[morris@sandiegolegal.com](mailto:morris@sandiegolegal.com)

Walter Haines (SBN 71075)  
**UNITED EMPLOYEES' LAW GROUP, P.C.**  
 65 Pine Avenue, #312  
 Long Beach, CA 90802  
 Tel: (877) 696-8378

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

RICHARD HOM, an individual on  
 behalf of himself and JUSTIN  
 KELLEY, an individual, on behalf of  
 himself, and on behalf of all persons  
 similarly situated,

Plaintiffs,

vs.

DHL EXPRESS (USA), INC., an Ohio  
 corporation conducting business in the  
 State of California, and Does 1 to 10.

Defendants.

**CASE NO. C 08-03756 JL**

**SECOND AMENDED  
 COMPLAINT FOR DAMAGES  
 AND RELIEF**

**1. FAILURE TO PAY OVERTIME  
 COMPENSATION**

[Cal. Lab. Code §§510, 515, 1194,  
 1198]

**2. FAILURE TO PROVIDE MEAL  
 AND REST PERIODS**

[Cal. Lab.Code §§226.7, 512]

**3. FAILURE TO PROVIDE  
 WAGES WHEN DUE**

[Cal. Lab.Code §§201-203];

**4. FAILURE TO COMPLY WITH  
 ITEMIZED EMPLOYEE WAGE  
 STATEMENT PROVISIONS**

[Cal. Lab. Code §226(a)]; and

**5. UNFAIR COMPETITION**

[Cal. Bus. & Prof. Code §17200, *et seq.*]

**CLASS ACTION**

**DEMAND FOR A JURY TRIAL**

1 This class action is brought on behalf of present and former Field Services  
2 Supervisors employed in the United States by Defendant DHL EXPRESS (USA),  
3 INC. (hereinafter "DHL"). All allegations in this Complaint are based upon  
4 information and belief except for those allegations which pertain to the Plaintiffs  
5 named herein, RICHARD HOM and JUSTIN KELLEY, (hereinafter  
6 "PLAINTIFFS"), and their counsel. Each allegation in this Complaint either has  
7 evidentiary support or is likely to have evidentiary support after a reasonable  
8 opportunity for further investigation and discovery.

### 10 PRELIMINARY STATEMENT

11 1. This is an action for unpaid minimum wages, overtime, and damages  
12 brought by Plaintiffs on behalf of themselves and other similarly situated Field  
13 Services Supervisors who were employed by Defendant in the United States.

14 2. Plaintiffs allege that the wage violations at issue arose out of a policy  
15 and practice of Defendant applicable to other, similarly situated workers. Plaintiffs  
16 seek money damages to redress these violations of law.

### 18 JURISDICTION

19 3. This Court has jurisdiction over the subject matter of this action  
20 pursuant to 28 U.S.C. § 1332 (Diversity of Citizenship).

### 22 VENUE

23 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). Venue  
24 is proper in this Court because the injuries to the persons complained of herein  
25 occurred in the County of Alameda, California.

### 27 PARTIES

28 5. Plaintiffs RICHARD HOM and JUSTIN KELLEY ("PLAINTIFFS")

1 allege that at all material times mentioned herein, they are and were:

- 2 (a) Individuals who currently reside in the State of California;
- 3 (b) Employed as a Field Services Supervisor for Defendant DHL;
- 4 (c) Who worked more than eight (8) hours in any given day and
- 5 more than forty (40) hours in any given week;
- 6 (d) Did not receive overtime compensation; and
- 7 (e) Are members of the CLASS as defined in this Complaint.

8 6. PLAINTIFFS are informed and believe, and allege upon information  
9 and belief, that Defendant DHL, at all times during the Class Period was:

- 10 (a) A shipper/delivery service with its main office located in the
- 11 State of Florida and conducting business throughout the United
- 12 States and in the County of Alameda in the State of California;
- 13 (b) The current and/or former employer of PLAINTIFFS and the
- 14 current and/or former employer of the putative CLASS members;
- 15 and
- 16 (c) Failed to pay overtime compensation to all members of the
- 17 CLASS.

18 7. PLAINTIFFS seek to bring their claims on behalf of “all Field Services  
19 Supervisors employed in California by Defendant during the Claims Period” and  
20 will further represent any such individuals who have additional timely claims  
21 arising from employment with DHL.

### 22 23 **REPRESENTATIVE CLASS ALLEGATIONS**

24 8. This Complaint is brought, in part, as a Representative Action as  
25 authorized by California Code of Civil Procedure §382.

26 9. It is the position of counsel for the PLAINTIFFS that this action is not  
27 subject to the requirements and Procedures of Fed.R.Civ.P. 23.

28 10. The class is so numerous that joinder of all members is impracticable.

1 11. PLAINTIFFS are adequate representatives of the proposed  
2 representative CLASS hereunder, because:

3 (a) Their claims are typical of those of other persons in the  
4 represented CLASS;

5 (b) They are represented by competent counsel with experience in  
6 related litigation; and

7 (c) Defendant acted on grounds common to all members of the  
8 represented CLASS.

9 12. Alleged questions common to the CLASS are set forth in detail below.

10 13. Alleged questions of law arise primarily from Defendant's obligations  
11 under the California Labor Code. Those questions are common to all the claims.

12 14. There is little need for individual represented CLASS members to  
13 individually control their claims as the issues are common to all persons and  
14 primarily involve common issues of law.

15 15. Counsel is unaware, after inquiry, of any pending litigation involving  
16 this issue with Defendant.

17 16. This forum is an appropriate forum for concentration of litigation of  
18 these claims involving the Defendant as the practice of denying overtime benefits  
19 was carried out in this forum and caused injury in this district.

20 17. No serious difficulties are anticipated in the administration of this  
21 matter as a representative action if Defendant promptly cooperates in the provision  
22 of information necessary to communicate with potential represented class  
23 members.

24  
25 **FACTS**

26 18. At all times relevant herein, Defendant was an enterprise engaged in  
27 commerce as that term is defined in 29 U.S.C. §§ 203(r) and (s).

28 19. PLAINTIFF RICHARD HOM alleges that he was employed by DHL

1 from February, 2007 to approximately February, 2009 as a Field Services  
2 Supervisor and PLAINTIFF JUSTIN KELLEY alleges that he was employed by  
3 DHL from January, 2005 to February, 2008 as a Field Services Supervisor.

4 20. Defendant DHL improperly classified PLAINTIFFS, and other  
5 members of the CLASS, as "exempt." Consequently, the PLAINTIFFS, and the  
6 other members of the CLASS, were not paid overtime wages for hours worked in  
7 excess of eight (8) hours per day and/or forty (40) hours per week. Although  
8 classified as exempt, the duties of PLAINTIFFS, and other members of the  
9 CLASS, do not meet the requirements for exemption from overtime compensation.

10 21. Throughout the Class Period, DHL systematically misclassified  
11 PLAINTIFFS and every other Field Services Supervisor who are members of the  
12 CLASS as "exempt," when in fact they are not.

13 22. Accordingly, and despite the fact that PLAINTIFFS, and the other  
14 members of the CLASS, regularly worked in excess of eight (8) hours a day and  
15 forty (40) hours per week, they did not receive overtime compensation in violation  
16 of California State law overtime requirements for all hours worked in excess of  
17 forty (40) hours per week. The failure to provide such overtime payment to  
18 PLAINTIFFS deprived them of rights protected under the California Labor Code  
19 and Industrial Welfare Commission.

20 23. Plaintiffs sought and obtained leave of this Court to amend their  
21 Complaint to add claims under the Private Attorney Generals Act of 2004 (PAGA).  
22 A copy of the letter sent to the California Labor & Workforce Development  
23 Agency on December 17, 2009, via certified mail, and copied to Defendant's  
24 counsel, on the same date, via certified mail, is attached hereto, as Exhibit "1", and  
25 by reference thereto incorporated herein.

26  
27  
28

**FIRST CAUSE OF ACTION**

**FOR FAILURE TO PAY OVERTIME COMPENSATION**  
**[Cal. Lab. Code §§510, 515.5, 1194 and 1198]**  
**(By the CLASS and Against all Defendants)**

23. PLAINTIFFS incorporate by reference the preceding allegations of this Complaint as though set forth here in their entirety.

24. Cal. Lab. Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

25. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid overtime compensation, interest thereon, together with the costs of suit, and attorneys fees. Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

26. DHL has intentionally and improperly designated certain employees, including PLAINTIFFS, and other members of the CLASS, as "exempt" employees to avoid payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

27. In particular, the Industrial Welfare Commission Wage Order No.4 sets forth the requirements which must be complied with to place an employee in an exempt category. For an employee to be exempt as a bona fide "executive," all the following criteria must be met:

- (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and
- (b) Who customarily and regularly directs the work of two or more other employees therein; and
- (c) Who has the authority to hire or fire other employees or whose

1 suggestions and recommendations as to the hiring or firing and  
 2 as to the advancement and promotion or any other change of  
 3 status of other employees will be given particular weight; and

4 (d) Who customarily and regularly exercises discretion and  
 5 independent judgment; and

6 (e) Who is primarily engaged in duties which meet the test of the  
 7 exemption. The activities constituting exempt work and  
 8 non-exempt work shall be construed in the same manner as such  
 9 items are construed in the following regulations under the Fair  
 10 Labor Standards Act effective as of the date of this order: 29  
 11 C.F.R. Sections 541.102, 541.104-111, and 541.115-16. Exempt  
 12 work shall include, for example, all work that is directly and  
 13 closely related to exempt work and work which is properly  
 14 viewed as a means for carrying out exempt functions. The work  
 15 actually performed by the employee during the course of the  
 16 workweek must, first and foremost, be examined and the amount  
 17 of time the employee spends on such work, together with the  
 18 employer's realistic expectations and the realistic requirements of  
 19 the job, shall be considered in determining whether the employee  
 20 satisfies this requirement; and

21 (f) Such an employee must also earn a monthly salary equivalent to  
 22 no less than two (2) times the state minimum wage for full-time  
 23 employment. Full-time employment is defined in Labor Code  
 24 Section 515(c) as 40 hours per week.

25 28. The job duties of PLAINTIFFS, and other members of the CLASS, do  
 26 not fit the definition of either an exempt executive, administrative, or professional  
 27 employee because:

28 (a) Less than fifty percent (50%) of their work hours are spent on

1 managerial or administrative (exempt) duties;

2 (b) More than fifty percent (50%) of their work hours are spent  
3 performing non exempt duties, including but not limited to  
4 merchandising, stocking, cashiering, cleaning and customer  
5 service;

6 (c) They do not have discretion or independent judgment;

7 (d) They do not have the authority to hire and fire other personnel;  
8 and

9 (e) None of the exemptions articulated in Wage Order No.4, nor do  
10 the exemptions articulated in Cal. Lab. Code §515, apply to the  
11 PLAINTIFFS, or to the other members of the CLASS.

12 29. At all times relevant hereto, from time to time, the PLAINTIFFS, and  
13 the other members of the CLASS, have worked more than eight hours in a  
14 workday, and/or more than forty hours in a work week.

15 30. At all times relevant hereto, Defendant DHL failed to pay  
16 PLAINTIFFS, and the other members of the CLASS, overtime compensation for  
17 the hours they have worked in excess of the maximum hours permissible by law as  
18 required by Cal. Lab. Code §§ 510 and 1198. In fact, PLAINTIFFS, and the other  
19 members of the CLASS, were regularly required to work overtime hours.

20 31. By virtue of DHL's unlawful failure to pay additional compensation to  
21 the PLAINTIFFS, and the other members of the CLASS, for their overtime hours,  
22 the PLAINTIFFS, and the other members of the CLASS, have suffered, and will  
23 continue to suffer, damages in amounts which are presently unknown to them but  
24 which exceed the jurisdictional limits of this Court and which will be ascertained  
25 according to proof at trial.

26 32. PLAINTIFFS, and the other members of the CLASS, are informed and  
27 believe, and based upon that information and belief allege, that DHL knew or  
28 should have known that PLAINTIFFS, and the other members of the CLASS, did

1 not qualify as exempt employees and purposely elected not to pay them for their  
2 overtime labor.

3 33. PLAINTIFFS, and the other members of the CLASS, request recovery  
4 of overtime compensation according to proof, interest, attorney's fees and cost  
5 pursuant to Cal. Lab. Code §§ 218.5, and 1194(a), as well as the assessment of any  
6 statutory penalties against Defendant DHL, in a sum as provided by the Cal. Lab.  
7 Code and/or other statutes. Further, PLAINTIFFS, and the other members of the  
8 CLASS, are entitled to seek and recover reasonable attorneys' fees and costs  
9 pursuant to Cal. Lab. Code §§ 218.5 and 1194.

10

11

## **SECOND CAUSE OF ACTION**

12

### **FOR FAILURE TO PROVIDE MEAL PERIODS AND REST PERIODS**

13

**[Cal. Lab. Code §§ 226.7 and 512]  
(By the CLASS and Against All Defendants)**

14

34. PLAINTIFFS incorporate by reference the preceding allegations of this  
15 Complaint as though set forth here in their entirety.

16

35. Cal. Lab. Code §§ 226.7 and 512 provide that no employer shall  
17 employ any person for a work period of more than five (5) hours without a meal  
18 period of not less than 30 minutes.

19

36. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an  
20 employee a meal period in accordance with this section, the employer shall pay the  
21 employee one (1) hour of pay at the employee's regular rate of compensation for  
22 each five (5) hours of work that the meal period is not provided.

23

37. DHL has intentionally and improperly denied meal periods to  
24 PLAINTIFFS, and other members of the CLASS, in violation of Cal. Lab. Code  
25 §§226.7 and 512.

26

38. At all times relevant hereto, PLAINTIFFS, and other members of the  
27 CLASS, have worked more than five hours in a workday. At all relevant times  
28 hereto, DHL has failed to provide meal periods as required by Cal. Lab. Code §§

1 226.7 and 512.

2 39. Cal. Lab. Code § 226.7 provides that employers shall authorize and  
3 permit employees to take rest periods at the rate of ten (10) minutes net rest time  
4 per four (4) hours of work.

5 40. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an  
6 employee rest periods in accordance with this section, the employer shall pay the  
7 employee one (1) hour of pay at the employee's regular rate of compensation for  
8 each workday that the rest period is not provided.

9 41. DHL has intentionally and improperly denied rest periods to  
10 PLAINTIFFS, and other members of the CLASS, in violation of Cal. Lab. Code §§  
11 226.7 and 512.

12 42. At all times relevant hereto, the PLAINTIFFS, and other members of  
13 the CLASS, have worked more than four hours in a workday. At all times relevant  
14 hereto, DHL failed to provide rest periods as required by Cal. Lab. Code §§ 226.7  
15 and 512.

16 43. By virtue of DHL's unlawful failure to provide rest periods to them,  
17 PLAINTIFFS, and other members of the CLASS, have suffered, and will continue  
18 to suffer, damages in amounts which are presently unknown to them, but which  
19 exceed the jurisdictional limits of this Court and which will be ascertained  
20 according to proof at trial.

21 44. PLAINTIFFS, and the other members of the CLASS, are informed and  
22 believe, and based upon that information and belief allege, that DHL knows or  
23 should have known that the PLAINTIFFS, and the other members of the CLASS,  
24 were entitled to meal periods and rest periods but purposely elected not to provide  
25 these mandated periods.

26 45. PLAINTIFFS, and the other members of the CLASS, are entitled to  
27 seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§  
28 226.7 and 512.

**THIRD CAUSE OF ACTION**

**For Failure to Pay Wages When Due  
[Cal. Lab. Code § 203]  
(By the CLASS and Against All DEFENDANTS)**

46. PLAINTIFFS incorporate by reference the preceding allegations of this Complaint as though set forth here in their entirety.

47. Cal. Lab. Code § 200 provides that:

As used in this article:

- (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.
- (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

48. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of

quitting.

49. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

50. Many of the CLASS member's employment has been terminated and DEFENDANT has not tendered restitution of wages owed.

51. Therefore, as provided by Cal. Lab. Code § 203, on behalf of themselves and the members of the CLASS, PLAINTIFFS demand thirty (30) days of pay as penalty for not paying all wages due at the time of termination for all employees whose employment terminated during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest, as provided by Cal. Lab. Code § 218.6 plus attorneys fees and interest as allowed by law.

#### FOURTH CAUSE OF ACTION

##### Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By the CLASS and against All Defendants)

52. PLAINTIFFS incorporate by reference the preceding allegations of this Complaint as though set forth here in their entirety.

53. Cal. Lab. Code § 226 provides that an employer must furnish employees with an "accurate itemized statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of  
2 Section 515 or any applicable order of the Industrial Welfare  
3 Commission,

4 (3) the number of piece rate units earned and any applicable piece  
5 rate if the employee is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written  
7 orders of the employee may be aggregated and shown as one  
8 item,

9 (5) net wages earned,

10 (6) the inclusive dates of the period for which the employee is paid,

11 (7) the name of the employee and his or her social security number,  
12 except that by January 1, 2008, only the last four digits of his or  
13 her social security number or an employee identification number  
14 other than a social security number may be shown on the  
15 itemized statement,

16 (8) the name and address of the legal entity that is the employer, and

17 (9) all applicable hourly rates in effect during the pay period and the  
18 corresponding number of hours worked at each hourly rate by  
19 the employee."

20 54. At all times relevant herein, DEFENDANT violated Cal. Lab. Code §  
21 226, in that DEFENDANT failed to properly and accurately itemize the number of  
22 hours worked by PLAINTIFFS, and the other members of the CLASS at the  
23 effective regular rates of pay and the effective overtime rates of pay.

24 55. DEFENDANT knowingly and intentionally failed to comply with Cal.  
25 Lab. Code § 226, causing damages to PLAINTIFFS, and the other members of the  
26 CLASS. These damages include, but are not limited to, costs expended calculating  
27 the true hours worked and the amount of employment taxes which were not  
28 properly paid to state and federal tax authorities. These damages are difficult to

1 estimate. Therefore, PLAINTIFFS, and the other members of the CLASS seek to  
 2 recover liquidated damages of \$50.00 for the initial pay period in which the  
 3 violation occurred, and \$100.00 for each violation in subsequent pay periods  
 4 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of  
 5 trial (but in no event more than \$4,000.00 for PLAINTIFFS and each respective  
 6 member of the CLASS herein) plus reasonable attorney's fees and costs pursuant to  
 7 Cal. Lab. Code § 226(g).

## 9 **FIFTH CAUSE OF ACTION**

### 10 **For Unlawful Business Practices** 11 **[Cal. Bus. And Prof. Code §§ 17200 et seq.]** **(By the CLASS and against All Defendants)**

12 56. PLAINTIFFS incorporate by reference the preceding allegations of this  
 13 Complaint as though set forth here in their entirety.

14 57. DHL is a "person" as that term is defined under Cal. Bus. and Prof.  
 15 Code §17201.

16 58. Cal. Bus. and Prof. Code § 17200 defines unfair competition as any  
 17 unlawful, unfair, or fraudulent business act or practice.

18 59. At all times relevant hereto, by and through the conduct described  
 19 herein, DHL has engaged in unfair and unlawful practices by failing to pay  
 20 PLAINTIFFS, and the other members of the CLASS, overtime compensation, and  
 21 has failed to provide meal and rest breaks, pursuant to the applicable Cal. Lab.  
 22 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus.  
 23 and Prof. Code § 17200 et seq., and has thereby deprived PLAINTIFFS, and the  
 24 other members of the CLASS, of fundamental rights and privileges.

25 60. By and through the unfair and unlawful business practices described  
 26 herein, DHL has obtained valuable property, money, and services from the  
 27 PLAINTIFFS, and the other members of the CLASS, and has deprived them of  
 28 valuable rights and benefits guaranteed by law, all to their detriment.

1        61. All the acts described herein as violations of, among other things, the  
2 Cal. Lab. Code and Industrial Welfare Commission Wage Order, are unlawful and  
3 in violation of public policy; and in addition are immoral, unethical, oppressive,  
4 and unscrupulous, and thereby constitute unfair and unlawful business practices in  
5 violation of Cal. Bus. And Prof. Code § 17200 et seq.

6        62. PLAINTIFFS, and the other members of the CLASS, are entitled to,  
7 and do, seek such relief as may be necessary to restore to them the money and  
8 property which Defendant DHL has acquired, or of which PLAINTIFFS, and other  
9 members of the CLASS, have been deprived, by means of the above described  
10 unfair and unlawful business practices.

11        63. PLAINTIFFS, and the other members of the CLASS, are further  
12 entitled to, and do, seek a declaration that the above described business practices  
13 are unfair and unlawful and that an injunctive relief should be issued restraining  
14 DHL from engaging in any of the above described unfair and unlawful business  
15 practices in the future.

16        64. PLAINTIFFS, and the other members of the CLASS, have no plain,  
17 speedy, and/or adequate remedy at law to redress the injuries which they have  
18 suffered as a consequence of the unfair and unlawful business practices of DHL.  
19 As a result of the unfair and unlawful business practices described above,  
20 PLAINTIFFS, and the other members of the CLASS, have suffered and will  
21 continue to suffer irreparable harm unless DHL is restrained from continuing to  
22 engage in these unfair and unlawful business practices. In addition, DHL should be  
23 required to disgorge the unpaid moneys to PLAINTIFFS, and the other members of  
24 the CLASS.

25  
26                                    **PRAYER FOR RELIEF**

27        WHEREFORE, PLAINTIFFSS pray for judgment against each Defendant,  
28 jointly and severally, as follows:

**ON FIRST CAUSE OF ACTION**

1. For compensatory damages, including lost wages, commissions, bonuses, and other losses, during the period commencing on the date that is within four (4) years prior to the filing of this Complaint according to proof;
2. For general damages, according to proof;
3. For an award of interest, including prejudgment interest at the legal rate;
4. For statutory damages, including the assessment of penalties and reasonable attorneys' fees and cost of suit.

**ON SECOND CAUSE OF ACTION**

1. One hour of pay for each workday in which a rest period was not provided for each four hours of work during the period commencing on the date that is within four years prior to the filing of this Complaint, provided, however, that if the Supreme Court in the Kenneth Cole Productions case, S140308, determines that Labor Code 226.7 is subject to a one year limitations period, then PLAINTIFFS seek penalties for the year preceding filing of the complaint and until the class is certified;
2. One hour of pay for each five (5) hours of work in which a meal period was not provided;
3. For attorneys' fees and costs.

**ON THIRD CAUSE OF ACTION**

1. For thirty days of pay as a penalty for not paying all wages due at the time of termination of employment for PLAINTIFFS and members of the CLASS whose employment terminated within three years of the

filing of the complaint until the date of entry of judgment as provided  
for by Cal. Lab. Code §§ 201 -203;

2. For attorneys' fees and costs.

#### **ON FOURTH CAUSE OF ACTION**

1. For liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay periods pursuant to Cal. Lab. Code § 226 (but in no event more than \$4,000.00 for PLAINTIFFS and each respective member of the CLASS herein);
2. For attorney's fees and costs.

#### **FIFTH CAUSE OF ACTION**

1. For restitution and/or restitutionary disgorgement;
2. For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper;
3. For other injunctive relief ordering DHL to notify the CLASS that they have not been paid the proper amounts required in accordance with California law.

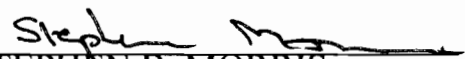
#### **ON ALL CAUSES OF ACTION**

1. For such other and further relief as the Court deems just and proper.

Dated: December 17, 2009

MORRIS AND ASSOCIATES

By:

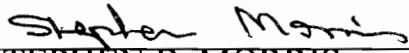
  
STEPHEN B. MORRIS  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

PLAINTIFFS demands jury trial on all issues triable to a jury.

Dated: December 17, 2009

MORRIS AND ASSOCIATES

By:   
STEPHEN B. MORRIS  
Attorneys for Plaintiffs

Additional Counsel:

**UNITED EMPLOYEES LAW GROUP**

Walter Haines, Esq. (SBN #71075)

65 Pine Ave, #312

Long Beach, California 90802

Telephone: (877) 696-8378

Facsimile: (562) 256-1006

<b>UNITED STATES DISTRICT COURT</b> <b>NORTHERN DISTRICT OF CALIFORNIA</b>		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated): <b>HOM, et al. v. DHL EXPRESS (USA), INC.</b>		
ATTORNEY(S) NAME AND ADDRESS Stephen B. Morris <b>MORRIS and ASSOCIATES</b> 444 West C Street, Suite 300 San Diego, CA 92101	TELEPHONE  (619) 239-1300	
<b>ATTORNEY(S) FOR:</b> Plaintiff	<b>HEARING: DATE-TIME-DEPT</b>	<b>CASE NUMBER:</b> C 08-03756 JL

### DECLARATION OF SERVICE BY MAIL

I, Jenna Sarinas, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action. I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 444 West C Street, Suite 300, San Diego, California 92101. I am readily familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service and with serving documents via facsimile. I served an original and/or a true and correct copy of the following documents:

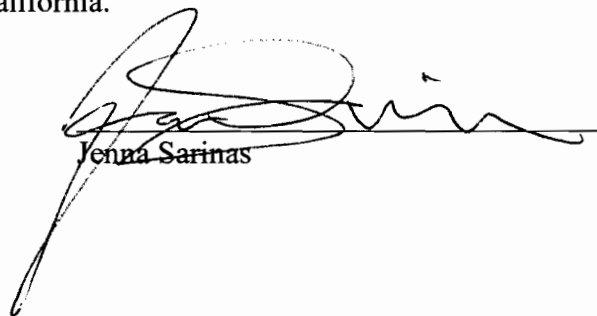
#### 1. SECOND AMENDED COMPLAINT FOR DAMAGES AND RELIEF

X BY U.S. MAIL: I placed a copy of each of the above-listed documents in an envelope addressed to each addressee respectively named as follows and sealed each envelope and placed them for collection and mailing to each addressee and by electronic filing, on December 17, 2009.

#### Attorneys for Defendant:

R. Brian Dixon  
 Laura E. Hayward  
 LITTLER MENDELSON, APC  
 650 California Street, 20<sup>th</sup> Floor  
 San Francisco, CA 94108-2693

I certify under penalty of perjury that the foregoing is true and correct pursuant to the laws of the State of California. Executed on December 17, 2009 at San Diego, California.

  
 Jenna Sarinas